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8 U.S. Bank Trust, National Association, as Trustee of the Igloo Series
9 III Trust, its successors
10 and assigns

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

13 In Re:) CASE NO.: 17-52577
14 Abraham Valerio,)
15 Debtor.) CHAPTER 13
16)
17) REF.: MRG-1
18)
19) MOTION FOR RELIEF FROM THE
20) AUTOMATIC STAY
21)
22) DATE: 11/6/18
23) TIME: 10:30AM
24) CTRM: 3099
25) PLACE: United States Courthouse
26) 280 South First Street
27) San Jose CA 95113
28)
29) Honorable Stephen L. Johnson

30 The Motion of U.S. Bank Trust, National Association, as Trustee of the Igloo Series
31 III Trust.

32 (“**Movant**”) respectfully shows as follows:

33 1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C.
34 Sections 157 and 1334.

35 2. On October 24, 2017, Abraham Valerio (the “**Debtor**”) filed a petition
36 under Chapter 13 of the United States Bankruptcy Code (“**Instant Petition**”).

37 3. Debtor executed and delivered to Wells Fargo Bank, N.A., a Note, dated

1 December 3, 2007, with an original principal balance of \$645,300.00 (the “**Note**”).

2 4. Movant is the current owner of the Note and is in possession of the original
3 Note.

4 5. Concurrently therewith, and as security for the Note, Debtor executed and
5 delivered to Wells Fargo Bank, N.A., a Deed of Trust which was recorded in the Official
6 Records of Santa Cruz, California as Document No. 2007-0063352 (the “**Deed of Trust**”),
7 and which encumbers the Property.

8 6. Thereafter, all interests in the Deed of Trust were assigned to Movant by
9 Assignment of Deed of Trust.

10 7. Movant is the current beneficiary of the Deed of Trust.

11 8. Pursuant to the Deed of Trust, Movant is entitled to recover attorneys’ fees and
12 Costs in connection with the matter herein.

13 9. Pursuant to the Deed of Trust, Movant is entitled to take the necessary steps to
14 protect its security interest in the Property, including advancing taxes, insurance, foreclosure
15 fees and costs and attorney’s fees and costs and to assess the costs plus interest, to the balance
16 due under the loan.

17 10. Movant’s loan is post-petition due for the November 1, 2017 payment and all
18 subsequent payments as follows:

11/01/17-05/01/18	7 Payments @ \$3,897.05	= \$27,279.35
06/01/18-10/01/18	5 Payments @ \$3,945.92	= \$19,729.60
10/01/2018	\$1,081.00	= \$1,081.00
Total		= \$48,089.95

23 The current unpaid principal balance is no less than approximately \$710,329.42.
24 The total owed to Movant is no less than approximately \$868,638.72.

25 11. The Debtor is not in the process of a Loan Modification.

26 12. Movant does not have, and has not been offered, adequate protection for its
27 interest in the Property and the passage of time will result in irreparable injury to Movant’s
28 interest in the Property including, but not limited to, loss of interest and opportunity.

1 13. The Debtor's confirmed Chapter 13 Plan indicates the Debtor will make
2 monthly mortgage payments to Movant. However, the Debtor is not current with his monthly
3 mortgage payments to Movant and thus have failed to comply with the terms of his Chapter
4 13 Plan

5 14. For all the reasons set forth herein, there is cause for relief from stay including,
6 but not limited to lack of adequate protection and the Debtors' failure to make the payments
7 required by her confirmed Chapter 13 Plan and as required under the Note and Deed of Trust.

8 15. WHEREFORE, Movant prays for the judgment against Debtor as follows:

9 (1) That the automatic stay be terminated so that Movant may exercise or cause to be
10 exercised any and all rights under its Note and/or deed of trust and any and all
11 rights after the foreclosure sale, including, but not limited to, the right to
12 commence foreclosure proceedings on the property and the right to proceed in
13 unlawful detainer;

14 (2) The co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) is terminated, modified or
15 annulled as to the co-debtor, as to the same terms and conditions as to the Debtor;

16 (3) For reasonable attorneys' fees as a secured claim under 11 U.S.C. Section 506(b);

17 (4) For the waiver of the 14 day stay pursuant to Bankruptcy Rule 4001(a) (3);

18 (5) For costs incurred or expended in suit herein; and

19 (6) For such other and further relief as the Court deems just and proper.

20
21 Dated: October 19, 2018

22 /s/ Kristin Zilberstein, Esq.

23 Kristin Zilberstein, Esq.,
24 Attorney for Movant U.S. Bank Trust N.A., as
25 Trustee of the Igloo Series III Trust